

BEFORE LINDA McCULLOCH, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION  
STATE OF MONTANA

\*\*\*\*\*

BOARD OF TRUSTEES, BELGRADE	)	
	)	
SCHOOL DISTRICT NO. 44,	)	OSPI 310-06
	)	
Appellant,	)	<b>DECISION AND ORDER</b>
	)	
v.	)	
	)	
[K.L.], parent of, and T.L. and K.L., students	)	
	)	
Respondents.	)	
	)	

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Having reviewed the record and considered the parties' briefs, the Superintendent of Public Instruction issues the following Decision and Order.

**DECISION AND ORDER**

The December 12, 2006 Order Denying Motion to Dismiss and Granting Motion to Amend Notice of Appeal by the Gallatin County Superintendent of Schools is hereby REVERSED and the Respondents' appeal is hereby dismissed.

**PROCEDURAL HISTORY**

On October 30, 2006 [K.L.], on behalf of her children, T.L. and K.L. (hereinafter [Respondents]) filed a Notice of Appeal with the Gallatin County Superintendent of Schools. Belgrade School District #44 (hereinafter District) filed its Motion to Dismiss the appeal on November 8, 2006. [Respondents] filed their Brief Opposing the Motion to Dismiss on November 15<sup>th</sup> and filed a Supplemental Brief and Motion to Amend Notice of Appeal on

1 November 21, 2006.

2 The Gallatin County Superintendent of Schools issued her Order Denying Motion to  
3 dismiss and Granting Motion to Amend Notice of Appeal on December 12, 2006. The District  
4 filed its Notice of Appeal with this office on December 13, 2006.

### 5 **ISSUES ON APPEAL**

6 The issue on appeal is: Whether this matter is a contested case over which the County  
7 Superintendent has jurisdiction?  
8

### 9 **STANDARD OF REVIEW**

10 The State Superintendent's review of a county superintendent's decision is based on the  
11 standard of review of administrative decisions established by the Montana Legislature in Mont.  
12 Code Ann. §2-4-704 and adopted by the State Superintendent in Admin. R. Mont. 10.6.125.  
13 Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are  
14 reviewed to determine if the correct standard of law was applied. *Harris v. Trustees, Cascade*  
15 *County School Districts No. 6 and F, and Nancy Keenan*, 241 Mont. 274, 277, 786 P.2d 1164,  
16 1166 (1990) and *Steer, Inc. v. Dept. of Revenue*, 245 Mont. 470, at 474, 803 P.2d 601, 603  
17 (1990).  
18

19 The State Superintendent may reverse or modify the county superintendent's decision if  
20 substantial rights of the Appellant have been prejudiced because the findings of fact, conclusions  
21 of law and order are (a) in violation of constitutional or statutory provisions; (b) in excess of the  
22 statutory authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e)  
23 clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;  
24 (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise  
25 of discretion; or (g) affected because findings of fact upon issues essential to the decision were

not made although requested. Admin. R. Mont. 10.6.125(4).

## **FINDINGS OF FACT**

1. T.L. and K.L. are students who were enrolled at Capital High School in Helena, Montana prior to August 2005.

2. In August, 2005, T.L. and K.L. moved to Belgrade, Montana and enrolled in Belgrade High School.

3. The credits earned by T.L. and K.L. were transferred from Capital High to Belgrade High School together with the letter grades assigned by Capital High.

4. The District applied its formula for calculating GPA's which resulted in a lower GPA for T.L. and K.L. as compared to their GPA's at Capital High.

5. The District and Capital High had differing policies with respect to the calculation of GPA's.

6. The [Respondents] requested that the District use the GPA's as calculated by Capital High for T.L. and K.L.

7. The District refused based on their policies.

8. [Respondents] filed a Notice of Appeal on October 30, 2006 with the Gallatin County Superintendent, because of the District's refusal to allow them to be heard at a meeting of the Board of Trustees regarding the their academic records.

9. The District moved to dismiss the appeal alleging that this matter is not a contested case and lack of jurisdiction.

10. On November 8, 2006 the District offered to hear the [Respondents'] issues at a board meeting on November 14, 2006.

11. The [Respondents] appeared at the board meeting on November 14, 2006. At this meeting the board denied the [Respondents'] request that T.L. and K.L.'s GPA's be changed.

12. On November 21, 2007 the [Respondents'] moved to amend their Notice of Appeal because of the denial of their request at the November 14, 2006 meeting.

13. On December 12, 2006 the County Superintendent issued an order finding that "this matter is a contested case and ... the present appeal is within the jurisdiction of the County Superintendent of Schools..."

14. The District appealed this decision to the State Superintendent of Public Instruction.

# MEMORANDUM OPINION

The first duty of the County Superintendent, upon receiving an appeal is to determine if the appeal is a contested case and whether or not he/she has jurisdiction over the issues on appeal. ARM 10.6.104

The Montana Supreme Court has held that "a county superintendent's jurisdiction over any appeal from a decision of a board of trustees is limited to those instances involving a 'contested case.'" *Dupuis v. Board of Trustees, Ronan School District*, 2006 MT 3, 128 P.3d 1010.

In order to determine if the County Superintendent has jurisdiction to hear a particular case the County Superintendent must determine whether or not the case is a "contested case" under Montana law. Montana administrative rule defines "contested case" as "any proceeding in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for hearing." ARM 10.6.102 The State Superintendent held in *Schultz v. Arlee School District #8-J*, OSPI 256-95 that "for a County Superintendent to have jurisdiction to hold a hearing a petitioner must have a constitutional, statutory or case law grant of a hearing right."

The issue on appeal also must be an issue relating to a statute in Title 20, Montana Code Annotated. MCA 20-3-210 provides in relevant part:

1 (1) ... The county superintendent shall hear and decide all controversies arising under:  
2 \*\*\*

3 (b) any other provision of this title for which a procedure for resolving controversies is  
4 not expressly prescribed." (Emphasis added)

5 The State Superintendent held in *Ronan School District v. Dupuis*, OSPI 296-03 that  
6 there was no basis in statutory, constitutional or case law to warrant an appeal to the County  
7 Superintendent citing:

8 "County superintendents also do not have the jurisdiction to rule on all matters of law  
9 that somehow may be related to schools. County superintendents have the power to conduct  
10 administrative hearings to issue findings of fact and conclusions of law in areas that are within  
11 their field of expertise under Title 20. They do not have the jurisdiction to rule on questions of  
12 law outside of Title 20. For example, they cannot hear tort claims and they do not hear actions  
13 arising out of the Montana Human Rights Act." *Brott v. School District No. 9, Browning Public  
14 Schools*, OSPI No. 234-94.

15 [Respondents] have not identified any constitutional, statutory or case law grant of a right  
16 to a hearing in this matter that the County Superintendent has jurisdiction over and the State  
17 Superintendent finds none. Although [Respondents] cite federal statutes, it is clear that the  
18 County Superintendent does not have jurisdiction over matters involving federal statutes.

19 Issues involving a dispute over a student's records, in this instance, grades, are governed  
20 by the Federal Family Educational Rights and Privacy Act (FERPA) 20 USCA 1232g. FERPA  
21 provides at 20 USCA 1232g(a)(2) that parents or eligible students (age 18):

22 "...are provided an opportunity for a hearing by [the district] in accordance with regulations of  
23 the Secretary, to challenge the content of such student's education records, in order to insure that  
24 the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of  
25 students, and to provide an opportunity for the correction or deletion of any such inaccurate,  
misleading or otherwise inappropriate data contained therein and to insert into such records a  
written explanation of the parents respecting the content of such records.

A student does not have a constitutional or statutory right to a hearing before the County  
Superintendent in connection with a dispute over a grade. The manner in which a student's GPA  
is calculated is not a right protected by the constitution, state statute or case law and therefore is  
not an issue that is subject to the jurisdiction of the County Superintendent.

1 Furthermore, the [Respondents] do not have a property interest in the method used to  
2 calculate their GPA. The Montana Supreme Court discussed the determination of the existence  
3 of a constitutionally protected property interest in *Boreen v. Christensen*, 280 Mont. 378, 930  
4 P.2d 67 (1996) as follows:

5 "The Supreme Court decision in *Loudermill* emphasized that property interests 'are not  
6 created by the Constitution, they are created and their dimensions are defined by existing rules or  
7 understandings that stem from an independent source such as state law.' Thus the question of  
8 whether a property interest exists must be examined by reference to state law." *Boreen, supra at*  
9 386, citing *Cleveland Bd. Of Education v Loudermill*, 470 U.S. 532 (1985).

10 The Supreme Court also held:

11 "To have a property interest in a benefit, a plaintiff clearly must have more than an  
12 abstract need or desire for it. Rather it must have a legitimate claim of entitlement to it.

13 When a plaintiff claims a property interest under state law, we determine whether a  
14 reasonable expectation of entitlement exists based largely on the language of the statute relied  
15 upon and the extent to which the legislature couched the entitlement in mandatory terms. Any  
16 significant discretion conferred upon a local agency defeats a claim of entitlement. Stated  
17 another way, a property interest exists only when the legislature has so narrowly circumscribed  
18 the issuing agency's discretion that it virtually assures the interest's approval. *Germann v.*  
19 *Stephens*, 2006 MT 130, 137 P.3d 545 (2006).

20 The Montana Constitution grants control of school districts to the locally elected board of  
21 trustees. State statute and administrative rule are silent as to the method for calculating a  
22 student's GPA. This is therefore left to the district to determine by the establishment of policy.  
23 [Respondents] state no statute that they are relying on to claim the method of determining their  
24 GPA's is a property right or entitlement.

25 The issue of a student having a protected property right in their GPA has not been  
litigated in Montana but this issue has been addressed in federal courts. They have held that an  
insubstantial reduction in a GPA does not constitute a deprivation of a property interest or trigger  
the Fourteenth Amendment's due process clause. See *Raymon v. Alvord Independent School*  
*District*, 639 F.2d 257 (5<sup>th</sup> Cir. 1981); *Obeersteller v. Four Bluff Independent School District*,  
874 F. Supp. 146.

1 **DECISION AND ORDER**

2 The December 12, 2006 Order Denying Motion to Dismiss and Granting Motion to  
3 Amend Notice of Appeal by the Gallatin County Superintendent of Schools is hereby  
4 REVERSED and the Respondents' appeal is hereby dismissed for lack of jurisdiction.  
5

6 DATED this 12<sup>th</sup> day of April, 2007.  
7

8 /s/ Linda McCulloch  
9 Linda McCulloch  
10 Superintendent of Public Instruction

11 **CERTIFICATE OF SERVICE**

12 THIS IS TO CERTIFY that on this 12<sup>th</sup> day of April, 2007, I caused a true and exact  
13 copy of the foregoing DECISION AND ORDER to be mailed, postage prepaid, to the following:

14 **Debra A. Silk**  
15 **Tony C. Koenig**  
16 **Montana School Boards Association**  
17 **One South Montana**  
18 **Helena MT 59601**

19 **Steven J. Shapiro**  
20 **Attorney at Law**  
21 **9 Friendship Lane, Suite 100**  
22 **Montana City MT 59634**

23 **Mary Ellen Fitzgerald**  
24 **Gallatin County Superintendent of Schools**  
25 **311 West Main Room 107**  
**Bozeman MT 59715**

/s/ Catherine K. Warhank  
CATHERINE K. WARHANK  
Chief Legal Counsel